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CHARLES ELMORE CRO
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IN THE

SUPREME COURT OF THE UNITED STATES.

JOE A. MAY and LEE MAY,
Petitioners,
vs.
JOHN M. PARKER COMPANY, INC.,
Respondent.

No. 411.

PETITION FOR WRIT OF CERTIORARI
and
BRIEF IN SUPPORT.

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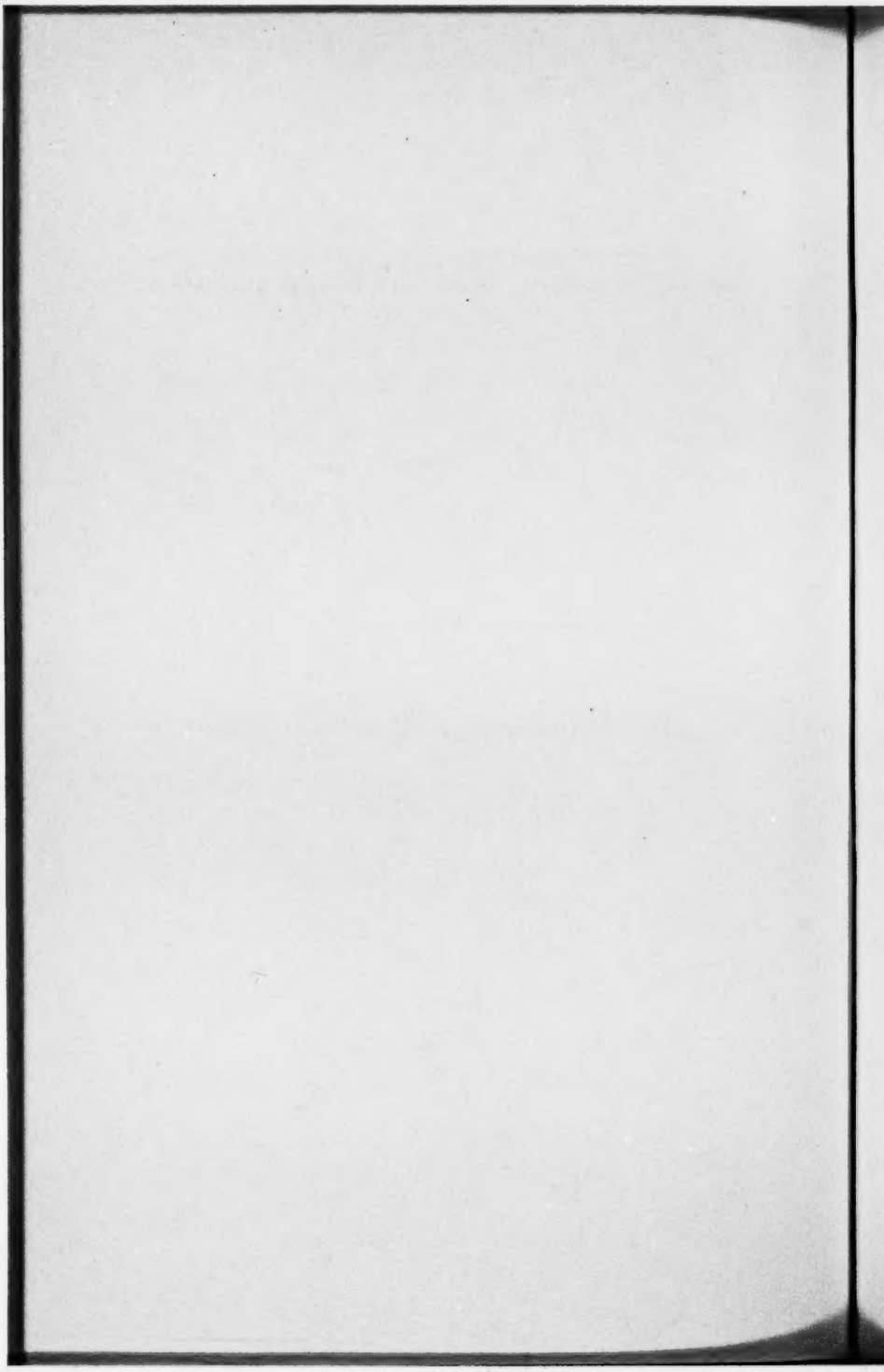

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No. .....,

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Petitioners Joe A. May and Lee May pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit in the above cause.

JURISDICTION.

Jurisdiction is invoked under the Judicial Code, Section 240; Section 347, Title 28, U. S. Code Annotated, and Rule 38, Paragraph 5 (b), Revised Rules of this Court, effective February 27, 1939.

QUESTIONS PRESENTED.

This case involves the question of existence of the power in the Commodity Credit Corporation, a corporate agency of the Government of the United States organized to assist

in carrying out the provisions and effectuating the purposes of the Agricultural Adjustment Act of 1938, 7 U. S. C. A. 1302, to prohibit, by duly published regulation, the vesting of any property interest in the assignee of any producer of agricultural products upon whose commodity a loan had been made, or to divest any title or interest existing prior to the regulation, if such transfers were permitted, and the question as to whether or not any such sales or assignments are not void against public policy. There is also involved the question of whether or not the contracts, "delivery orders," constituted sales or mere options to purchase. The questions arise out of the facts set forth in the statement of the case.

STATEMENT OF THE CASE.

In the year 1938 the petitioners produced, on their plantations in Sunflower County, Mississippi, 2,632 bales of cotton. They were producers and co-operators within the meaning of the Agricultural Adjustment Act (R. 202-203). Instead of selling the cotton on the market, the petitioners, in accordance with the provisions of the Agricultural Adjustment Act and the rules and regulations of the Commodity Credit Corporation, borrowed money from the Planters Bank and Trust Company of Ruleville, Mississippi, and pledged, to secure the loans, negotiable warehouse receipts issued by the warehouses wherein said cotton had been stored (R. 203). The bank making the loans was a lending agency of the Commodity Credit Corporation, and the loan notes and agreements were executed on forms required by the Commodity Credit Corporation (R. 203). These notes, together with the pledged warehouse receipts, were acquired by the Commodity Credit Corporation in the year 1939 and held by it until payment thereof on May 23, 1941.

The loans were evidenced by some seventy-one different notes, each note being identical except as to date, amount and description of the collateral. The form of the note is

found in record, pages 33 to 43. Each note matured on July 31, 1939 (R. 205). In 1939 the maturity date was extended by the Commodity Credit Corporation to July 31, 1940 (R. 205), and on April 3, 1940, the maturity date of each note was extended to July 31, 1941 (R. 25, 205-206).

The loan agreement, which was part of the same instrument containing the loan note, had in it several provisions dealing with the rights and liabilities of the holder of the loan note and agreement, and the producers so having executed same, respectively, and, among other provisions, is the one found in paragraph 5 (R. 39). This paragraph deals with what is to be done by the holder of the note with the proceeds of the sale of the collateral pledged in the event the indebtedness evidenced by the note is not paid when due, and it reads as follows:

> "5. After deducting all fees, costs and expenses incident to insuring, carrying, handling, and marketing the collateral and accounting to the undersigned producer, including all reasonable attorneys' fees, the holder shall apply the residue of any sales proceeds or insurance proceeds toward the payment of the abovementioned note, returning the overplus, if any, only to the undersigned, or his personal representatives, without right of assignment or substitution of any other party. * * *"

This quoted excerpt discloses that the rights of the producer of the cotton who has pledged same to secure a loan were not freely assignable.

The Director of the Commodity Credit Corporation was G. E. Rathell, whose deposition was taken and appears in the record, pages 22 to 51.

These loans were made pursuant to the Agricultural Adjustment Act of 1938, 7 U. S. C. A. 1302 (c), and, according to its terms, loans could be made only to producers of cotton, and then only on such cotton as was grown by such producer.

Most of the loans were consummated in the fall of 1938; a few in the early part of 1939 (R. 173).

Ben K. Pearce & Bro., cotton factors of Greenwood, Mississippi, during the latter part of December, 1939, entered into negotiations with the petitioners, which were consummated on January 2, 1940, whereby, in consideration of the sum of $5,264, the petitioners executed, at the request of Ben K. Pearce & Bro., in favor of respondent, seventy-one delivery orders, each of which was identical in form (except as to the dates of the respective notes, the number of bales of cotton pledged to secure same, and the amount of each note) (R. 204). These orders were as follows:

"Lombardy, Miss., Jan. 2, 1940.

"To: Commodity Credit Corporation, or
Other Holder of note or notes.

"Gentlemen:

"This is your authority to release to Jno. M. Parker Co., New Orleans, La. Five bales of cotton securing our note date 1/9/39 for $228.28 made payable to Planters Bank & Trust Co., Ruleville, Miss., upon the payment of same by them with accrued charges to the date of such release.

(Signed) May Brothers,
By J. A. May,
Member of Firm,

(Signed) Ben K. Pearce,
Witness

Bought By:
Jno. M. Parker Co.,
Buyer."

Ben K. Pearce & Bro. then delivered the orders to respondent (R. 56).

The complaint charged that, in the negotiations just referred to, Ben K. Pearce & Bro. was the agent for petition-

ers (R. 2). The pleadings interposed on behalf of the petitioners specifically denied that Ben K. Pearce & Bro. was the agent of petitioners. On this disputed question the court found that Ben K. Pearce & Bro. did not represent the petitioners (R. 205 and 209).

At the time of the acquisition by respondent of the so-called orders on which it based its rights to recover, respondent and Ben K. Pearce & Bro. knew that the notes evidencing the loans, which were secured by pledge of the warehouse receipts, matured on July 31, 1940, and that the right of respondent to pay the loan and get possession of and title to the warehouse receipts would have to be exercised on or before July 31, 1940 (R. 205).

On April 3, 1940, the maturity dates of the notes were extended to July 31, 1941 (R. 25). This extension was made known to the public in the form of a press release (R. 43-44). The action of the Commodity Credit Corporation in extending the loan was given publicity on April 3, 1940, by an announcement (R. 43) reading as follows:

> "Washington, D. C., April 3, 1940.
>
> "CCC Extends Loan on 1938 Cotton.
>
> "Commodity Credit Corporation announced today that the maturity of its loans on 1938 crop cotton has been extended one year to July 31, 1941. * * *
>
> "It was also announced by the Commodity Credit Corporation that after July 31, 1940, no request for the release of loan cotton to any person other than the producer will be accepted unless the request is submitted to the Corporation or its agent, on a standard form to be printed and provided by the Corporation, within fifteen days after it has been executed by the producer.
>
> "Officials of the Corporation pointed out that by deferring this necessary use of a standard release form until after July 31, 1940, there would be no interference with the release of cotton requested on other forms

executed and presented prior to July 31, 1940, the maturity date in effect heretofore when release forms were executed by producers."

Respondent had actual knowledge of this extension to July 31, 1941, and of the conditions thereof (R. 94).

The value of the cotton under pledge to the Commodity Credit Corporation was not such at any time during the year 1940 that the loans could be paid with a profit. The amount of the indebtedness owing on the cotton, together with the accrued charges, was more than the market value of the cotton (R. 206). The respondent did not, on or before July 31, 1940, and, in fact, not until May, 1941, make any attempt to redeem the cotton from the Commodity Credit Corporation (R. 94, 206-207). During the year 1941 and shortly before May 6th, a request was made of the petitioners that they execute, in favor of respondent, orders for release of the cotton on forms required by the Commodity Credit Corporation and referred to in such corporation's extension order of April 3, 1940 (R. 176). The petitioners refused to execute these orders (R. 177). Thereafter, on May 23, 1941, petitioners executed an order of release on forms required by the Commodity Credit Corporation, being referred to in the record as CCC Cotton Form R, to Bibb and Delap, in consideration of the payment to petitioners of the sum of $9.00 per bale (R. 179). The form of instrument required by the Commodity Credit Corporation to be used in order for cotton to be released after July 31, 1940, to anyone other than a producer, known as CCC Cotton Form R, is in evidence (R. 48-51). This form was required to be executed by both the producer and the purchaser desiring to redeem the cotton pledged to the corporation. It called attention to the fact that such executed form was the authority of the producer to any other person to redeem cotton warehouse receipts then under pledge to the Commodity Credit Corporation. It recited that, on the date of the

execution thereof, the producer, subject to the pledgee's interest of the Commodity Credit Corporation, had sold to the person tendering such form all of the producer's right, title and interest in and to the cotton represented by the warehouse receipts. The form further provided that the producer should state therein the amount that he had received as a consideration for the making of the transfer. The person who purchased the producer's right to redeem was required by the form to state that such purchase was made on the date the form was executed, and, further, that he, the purchaser, had on that day paid such sum as represented the consideration.

The officers having in charge the attainment of the result sought through the agency of the Commodity Credit Corporation construed their powers as including, first, the power to prohibit the assignability of rights in pledged commodities, and, second, the power to divest the claim, if any vested, of those who became assignees of such rights prior to a regulation refusing recognition of claim or title in such assignees, upon notice given and reasonable opportunity to redeem the pledged commodities before the defeasance regulation was put into effect. This is the construction given by the Commodity Credit Corporation as to the claim of the respondent to the cotton in the instant case.

Respondent never presented the delivery orders of January 2, 1940, to the Commodity Credit Corporation until May 7, 1941 (R. 83-84). The Commodity Credit Corporation refused to deliver the warehouse receipts on such orders (R. 87-88) because so to do would have been inconsistent with and in violation of the regulation of April 3, 1940, which regulation established the policy as to the delivery of warehouse receipts after July 31, 1940, to anyone other than the producer.

On May 23, 1941, petitioners executed Cotton Form R (R. 179) to Bibb and Delap, cotton buyers, and these forms

were honored by the Commodity Credit Corporation, and the warehouse receipts were delivered to the holders thereof.

For the convenience of the Court, the appendix is referred to for the statements made by the President and the Managing Director of the Commodity Credit Corporation, respectively, which fully explain that the adoption and enforcement of the regulation of April 3, 1940, restricting the rights of assignees was for the purpose of more effectively accomplishing the policy of Congress in dealing with pledged commodities under the Agricultural Adjustment Act of 1938 and of preventing the thwarting of such policy by those claiming as assignees of the producers of such commodities.

Respondent sued petitioners in the District Court for the Delta Division of the Northern District of Mississippi, seeking in the first count to recover the value of the cotton as for conversion; in the second, the amount received by petitioners for it, and in the third the sum paid for the delivery orders (R. 1-12).

The District Court entered judgment for petitioners, holding, in effect, that respondent had no title to the cotton after July 31, 1940, and entered judgment for petitioners, holding that the regulations requiring Cotton Form R were legal (R. 209, 210).

The Circuit Court of Appeals reversed the judgment of the lower court and held that the contracts between petitioners and respondent constituted sales of the cotton and not options; that such sales were not illegal because of any public policy of the United States, and, by necessary effect, that non-compliance with the regulation of April 3, 1940, did not and could not divest the title to the cotton which was held to have vested under the delivery orders of January 2, 1940 (opinion of the court, R. 225-231, 128 Fed. [2d]

1020). The court held that, while it might be a justifiable regulation "for the simplification and protection against its operations," it could not annul vested rights as between petitioners and respondent.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

This case presents questions of the first importance relating to the extent of the power of the Commodity Credit Corporation to prohibit the vesting of title, either legal or equitable, to commodities pledged as security for loans, and the right, if such interests have been transferred, to divest them, when necessary for the attainment of the ends sought to be obtained by the Agricultural Adjustment Act of 1938. The questions have not been passed upon heretofore, and an early authoritative decision and a definition of the extent of such powers sought to be exercised are of the utmost importance not only to the parties to this cause, but also to the Commodity Credit Corporation for its guidance in the future.

The decision of the Circuit Court of Appeals is also contrary to principles set forth in decisions of this court. (See accompanying brief.)

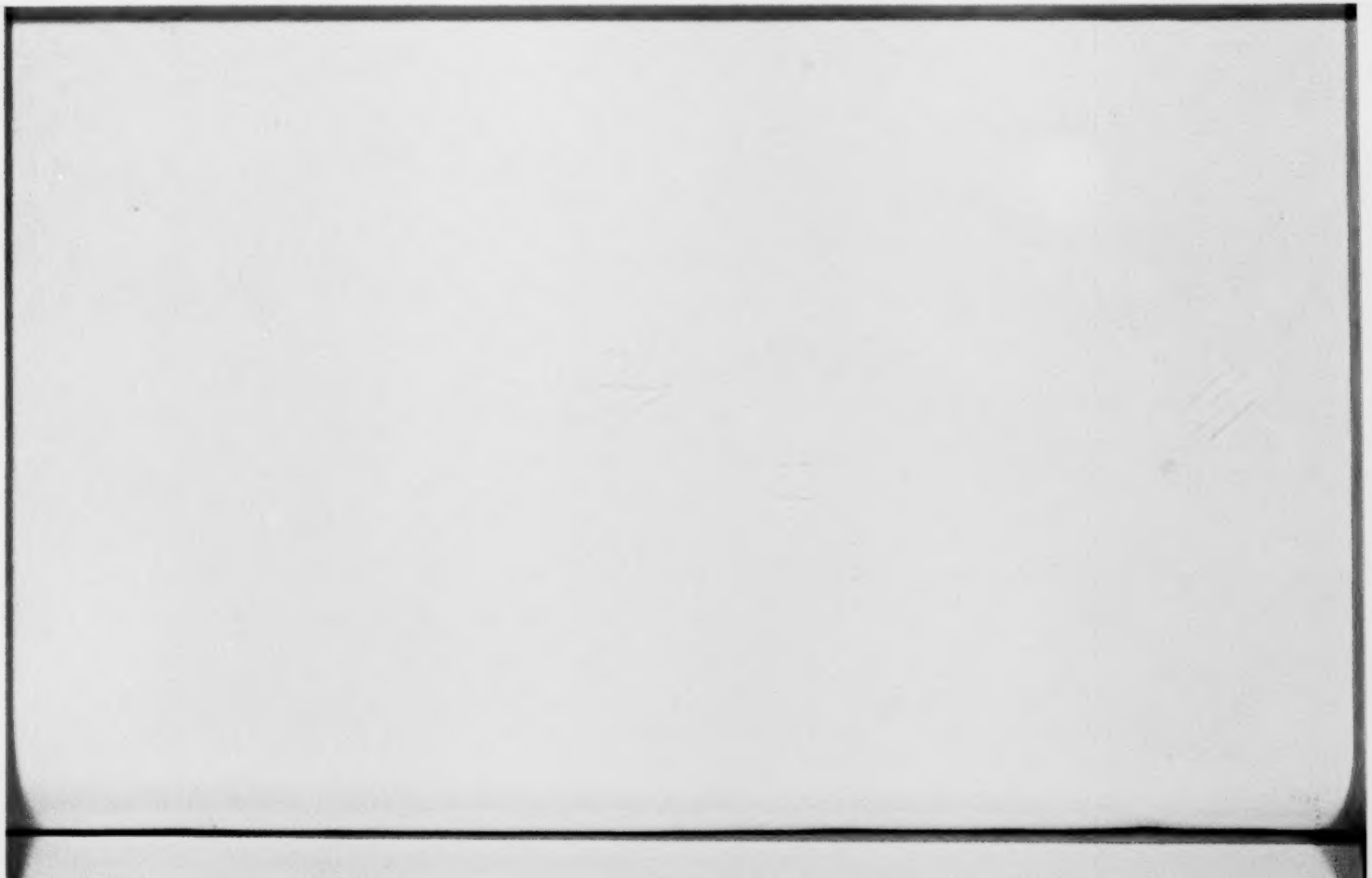
In the interest of brevity (Rule 38, par. 2), petitioners do not set forth all the points which will be urged at the argument on the merits of this cause, should the writ be granted, particularly that the delivery orders constituted mere options, but in order to conform to the rule of this court that all issues upon which decision is requested be presented in the petition for certiorari, petitioners here refer to and incorporate into this petition the point that the delivery orders were mere options, and the point that such orders could not be treated as contracts for the sale of the cotton as being insufficient under the statute of

frauds of Mississippi, Section 3347, Code 1930 (see appendix), and the point that there was no verbal contract of sale with a part of the purchase price paid.

Wherefore, your petitioners respectfully pray that this petition be granted.

Respectfully submitted,

J. L. ROBERSON,
W. W. VENABLE,
SEMMES LUCKETT,
Attorneys for Petitioners.



IN THE

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JOE A. MAY and LEE MAY,
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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Circuit Court of Appeals for the Fifth Circuit rendered June 27, 1942, is found at pages 225 to 231 of the Record and is reported in 128 Federal Reporter (2nd Edition) 1020.

II.

Jurisdiction is invoked under the **Judicial Code, Section 240; Section 347, Title 28, U. S. C. A.**

III.

The exercise by this Court of its discretion in issuing a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit is prayed for upon the basis of the reasons set out under the Revised Rules of this Court, effective Feb-

ruary 27, 1939, Rule 28, Paragraph 5, because the decision rendered by the Circuit Court of Appeals 1) decides an important question not heretofore passed upon involving the regulatory power of the Commodity Credit Corporation, a question of Federal law which has not been, but should be, settled by this Court; 2) decides a federal question in conflict with the applicable decisions of this Court; 3) decides a question of local law in a way probably in conflict with applicable local decisions, in that the contract relied on as constituting a sale is not sufficient for that purpose and is in violation of the Statute of Frauds of the State of Mississippi, **Section 3347, Mississippi Code 1930,** set out in the Appendix.

IV.

The statement of the case is set forth in the petition, which is referred to.

V.

ASSIGNMENT OF ERRORS.

The Circuit Court of Appeals for the Fifth Circuit erred in holding:

1.

That recognition in respondent of title or right in the cotton or right of action against petitioners in respect thereto, before July 31, 1940, and particularly after July 31, 1940, was not in conflict with public policy and the applicable decisions of the Supreme Court of the United States.

2.

That there was a sale and not merely an option to purchase the cotton, such decision being, it is thought, in conflict with the applicable decisions of the Supreme Court of the State of Mississippi.

VI.

ARGUMENT.

The Department of Agriculture and the Commodity Credit Corporation had power to adopt such regulations and impose such conditions with respect to loans and dealings with commodities as were reasonably necessary to effectuate the purposes and accomplish the results sought by the Agricultural Adjustment Act of 1938.

Sections 101, 302, 389, Agricultural Adjustment Act of 1938;
Honolulu Rapid Transit and Land Company v. Hawaii, 211 U. S. 282;
United States v. Grimaud, 220 U. S. 506;
Pittsburgh Plate Glass Company v. National Labor Relations Board, 313 U. S. 146;
Cook v. Donner, 145 Kan. 674, 110 A. L. R. 244.

Respondent, in dealing with the Commodity Credit Corporation and pledged cotton, did so with notice of such power and subject to its exercise because:

> Contracts made after a law is in force are made subject to it and impose only such obligations and create only such property as the law permits.
>
> **Abilene National Bank v. Dolley,** 228 U. S. 1, 57 L. ed. 707.

> A law existing affecting its performance becomes a part of the contract.
>
> **Southern Surety Co. v. Oklahoma,** 241 U. S. 582, 60 L. ed. 1187.

Private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict, **nor does it matter that legislation appropriate to a legitimate end has the effect of modifying or even abrogating existing contracts,** since contracts are to be regarded as having been made subject to future exercise of the constitutional power of

the State, and the reservation of essential attributes of sovereign power is read into contracts.

Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 78 L. ed. 413.

Respondent had notice specifically of the limitations upon its power to contract with respect to the pledged cotton, or acquire property rights therein because the loan contracts, Sec. 5 (R. 39), specifically set forth that, upon the sale of the pledged cotton or in dealing with proceeds of sale, any surplus, after payment of debts and charges, should be paid to the producer or his personal representative without recognition of any assignment to third parties, and specifically required those having liens at the time a loan was negotiated to waive the liens, with the right on the part of the Commodity Credit Corporation to redeliver the cotton or warehouse receipts to the producer on payment of the loan and to pay to the producer the proceeds of the loan, the proceeds of the sale of cotton or any insurance proceeds (R. 37).

(See testimony of G. E. Rathell, Director of the Cotton Division of the Commodity Credit Corporation, R. 44-47);

(See statement of J. B. Hutson, President of the Commodity Credit Corporation, quoted in Appendix, R. 98-99, 102-105).

By the regulatory terms of the loan contract, the Commodity Credit Corporation intended to prevent and prohibit the vesting of any indefeasible title in an assignee of producer-borrowers, because the purpose of the legislation was for producer-borrowers to have the benefit of any advance in price, and the same reason that would deny recognition of any claim of prior lienholders would likewise prevent recognition of any indefeasible right in those acquiring claims subsequent to the loan.

Assuming that any title or property had vested in respondent, the purpose and intent of the requirements of regulatory Cotton Form R was to divest its title, if it did not or could not comply with the conditions stated between the date of notice of the requirement, April 3, 1940, and the date when the requirement went into effect, July 31, 1940.

The purpose of the Agricultural Adjustment Act of 1938, Sections 2, 101, 302, 341, 344, 385, 389, was to promote the general welfare by promoting the financial prosperity of cooperating producers of the designated agricultural products. This was to be done by the regulation of interstate and foreign commerce to the extent necessary to provide an adequate and balanced flow of such commodities in interstate commerce and to prevent dumping, this, in turn, to be accomplished by storage of reserve supplies, loans, marketing quotas and assisting producers to obtain parity prices and consumers adequate and steady supplies at fair prices.

A regulation denying the recognition of any title in respondent and other assignees of producers was reasonably necessary to accomplish the purposes sought:

> Because permitting the assignments of pledged cotton would have the same economic effect as though producers had dumped their crops on the market and would defeat the purpose of the loans, which were to relieve the producers of the necessity of selling, and, by lessening the available supply of commodities on the market, to raise a depressed price to parity.
>
> Because it would enable cotton speculators, through the use of so-called "purchases," "delivery orders," or "options," to speculate on the cotton market at the expense of the Government and through a governmental agency.
>
> Because it would enable speculators in depressed times to purchase "delivery orders" and "options" for small sums, with the result that any rise in the

price of crops would go to such speculators and not to the producers, and thus defeat the purpose of the Congress to enhance the prosperity of the co-operating producers.

The position that the provisions of "Cotton Form R" could be held valid as between the Commodity Credit Corporation and the producer, but could have no effect as between assignee and producer, as held by the Circuit Court of Appeals, would defeat the objects sought, because it would give rise to the defeat of results sought, as hereinbefore stated.

Such being the effects of any recognition of indefeasible title in any assignee of producer-borrowers, such recognition would be contrary to public policy as tending to defeat the accomplishment of the purposes of the Agricultural Adjustment Act of 1938.

Hammerschmidt v. United States, 265 U. S. 182, 68 L. ed. 968;
Cook v. Donner, 145 Kan. 674, 110 A. L. R. 244;
Stoger v. Junker, 118 Atl. 440, 14 N. J. Mis. 913;
Jessewich v. Abbene, 277 N. Y. S. 599;
Cook v. Marks et al., 4 N. W. (2d) 465.

CONCLUSION.

It is respectfully submitted that a limitation both upon the right of the producer to assign pledged cotton and upon the right of the third party to take the assignment is necessary to carry out the purpose of the Agricultural Adjustment Act of 1938. The purpose was to promote the general welfare of the producers. The power to regulate by denying assignability or to require defeasance after fair notice is necessary. The producer-borrowers and third parties who make loans or deals with the commodities pledged necessarily do so subject to regulatory power.

Respondent had, from April 3, 1940, to July 31, 1940, to redeem the cotton, if it saw fit, and after July 31, 1940, its right to redeem was dependent upon its compliance with the regulation adopted by the Commodity Credit Corporation on April 3, 1940. This respondent did not do. To permit it to ignore the regulation and thereby gain the advance in the price of the cotton would be squarely opposed to the regulation of April 3, 1940, adopted for the purpose of accomplishing the objectives of the act. It cannot complain of any unfairness. Its present situation is due entirely to its own actions.

It is respectfully submitted that the issuance of certiorari should be ordered.

Respectfully submitted,

J. L. ROBERSON,
W. W. VENABLE,
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Attorneys for Petitioners.

APPENDIX A.

Extracts From the Agricultural Adjustment Act of 1938.

"Sec. 2. It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices."

* * * * * * *

"Sec. 302. (a) The Commodity Credit Corporation is authorized, upon recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities (including dairy products). Except as otherwise provided in this section, the amount, terms, and conditions of such loans shall be fixed by the Secretary, subject to the approval of the Corporation and the President."

* * * * * * *

"(c) The Corporation is directed to make available to cooperators loans upon cotton during any marketing year beginning in a calendar year in which the average price on

August 1 of seven-eighths Middling spot cotton on the ten markets designated by the Secretary is below 52 per centum of the parity price of cotton on such date, or the August crop estimate for cotton is in excess of a normal year's domestic consumption and exports, at rates not less than 52 per centum and not more than 75 per centum of the parity price of cotton as of the beginning of the marketing year. In case marketing quotas for cotton are in effect in any marketing year, the Corporation is directed to make available, during such marketing year, to noncooperators, loans upon cotton at 60 per centum of the rate applicable to cooperators. A loan on cotton to a noncooperator shall be made only on so much of his cotton as would be subject to penalty if marketed."

* * * * * * *

"(f) For the purposes of subsections (b), (c), and (d), a cooperator shall be a producer on whose farm the acreage planted to the commodity for the crop with respect to which the loan is made does not exceed the farm acreage allotment for the commodity under this title, or, in the case of loans upon corn to a producer outside the commercial corn-producing area, a producer on whose farm the acreage planted to soil-depleting crops does not exceed the farm acreage allotment for soil-depleting crops for the year in which the loan is made under the Soil Conservation and Domestic Allotment Act, as amended. For the purposes of this subsection a producer shall not be deemed to have exceeded his farm acreage allotment unless such producer knowingly exceeded his farm acreage allotment."

* * * * * * *

"(h) No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan under this section unless such loan was obtained through fraudulent representations by the producer."

* * * * * * *

"Sec. 341. American cotton is a basic source of clothing and industrial products used by every person in the United States and by substantial numbers of people in foreign countries. American cotton is sold on a world-wide market and moves from the places of production almost entirely in interstate and foreign commerce to processing establishments located throughout the world at places outside the State where the cotton is produced.

"Fluctuations in supplies of cotton and the marketing of excessive supplies of cotton in interstate and foreign commerce disrupt the orderly marketing of cotton in such commerce with consequent injury to and destruction of such commerce. Excessive supplies of cotton directly and materially affect the volume of cotton moving in interstate and foreign commerce and cause disparity in prices of cotton and industrial products moving in interstate and foreign commerce with consequent diminution of the volume of such commerce in industrial products.

"The conditions affecting the production and marketing of cotton are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of excessive supplies of cotton and fluctuations in supplies, cannot prevent indiscriminate dumping of excessive supplies on the Nation-wide and foreign markets, cannot maintain normal carry-overs of cotton, and cannot provide for the orderly marketing of cotton in interstate and foreign commerce.

"It is in the interest of the general welfare that interstate and foreign commerce in cotton be protected from the burdens caused by the marketing of excessive supplies of cotton in such commerce, that a supply of cotton be maintained which is adequate to meet domestic consumption and export requirements in years of drought, flood, and other adverse conditions as well as in years of plenty, and that the soil resources of the Nation be not wasted in the production of excessive supplies of cotton.

"The provisions of this Part affording a cooperative plan to cotton producers are necessary and appropriate to prevent the burdens on interstate and foreign commerce caused by the marketing in such commerce of excessive supplies, and to promote, foster, and maintain an orderly flow of an adequate supply of cotton in such commerce."

* * * * * * *

"Sec. 385. The facts constituting the basis for any Soil Conservation Act payment, parity payment, or loan, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary or by the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government."

* * * * * * *

"Sec. 389. The Secretary is authorized and directed to provide for the execution by the Agricultural Adjustment Administration of such of the powers conferred upon him by this Act as he deems may be appropriately exercised by such Administration; and for such purposes the provisions of law applicable to appointment and compensation of persons employed by the Agricultural Adjustment Administration shall apply."

APPENDIX B.

EXTRACTS FROM EVIDENCE.

Statement of G. E. Rathell, the director of the cotton division of the Commodity Credit Corporation (R. 44-48).

"Commodity Credit Corporation was created and funds have been made available to it for the purpose of aiding producers of agricultural commodities. The cotton loan programs conducted by the Corporation have been restricted to cotton producers, and only persons who produced the cotton tendered for loan, as landlord, tenant or sharecropper, were eligible for a loan.

"The 1938-1939 Cotton Loan Program conducted by the Corporation contained this provision that only the producer could obtain a loan and only on the security of the particular cotton produced by him. In addition to the general policy of the Corporation to restrict such loans to producers, this requirement was dictated by the fact that this loan program was instituted pursuant to Section 302 (c) of the Agricultural Adjustment Act of 1938 (7 U. S. C. 1302 (c)), which directs the Corporation to make loans to 'cooperators' and 'non-cooperators' under certain circumstances, 'cooperator' being defined as a producer who has stayed within the farm acreage allotment established for his farm. Very plainly, therefore, the Congressional purpose in making these loans available was to aid producers of cotton.

"To permit the producer to be divested of his interest immediately after the loan is obtained from the Corporation would tend to defeat the Congressional purpose almost as much as making loans available to persons other than producers. For this reason the Corporation found it necessary to discourage any action which would divest the producer of his interest in the cotton under the loan until such time as it was desired to remove the cotton from the loan.

The cotton producer's note and loan agreement under which these loans were made was so drawn that the producer did not retain a freely assignable interest in the pledged commodities. Evidence of this is the provision that any sales proceeds or insurance proceeds received by the Corporation shall, after deduction of the loan, plus charges and interest, be paid to the producer or his personal representatives 'without right of assignment or substitution of any other party.' This provision is necessarily inconsistent with the retention by the producer of a right to make a legally binding assignment of his remaining interest in the pledged cotton.

"The Corporation adopted the policy of permitting the redemption of cotton by persons holding purported assignments of the producer's equity in the commodity under loan, but it has never recognized any binding liability to the purchasers of such 'assignment' other than to permit such persons to redeem the commodity from loan where it was still held by the Corporation.

"The Corporation was of the opinion that its policy in refusing to recognize any legal liability to the 'assignees', while at the same time permitting such persons to redeem the cotton from the loan when the cotton had not been previously disposed of, would offer the producers an easy means to realize upon their interests in pledged cotton through the sale of 'assignment' (thus making it unnecessary for an individual producer to obtain the funds with which to repay his loan before a sale of the cotton), and at the same time would force purchasers of such documents to delay the purchase until there was an immediate intention of redeeming the cotton from the loan (thus preventing speculators from divesting the producers of their interests in loan cotton long prior to redemption, and thus preventing use of the loan program as a cheap means of speculation).

"The Corporation discovered that the policy then in force did not, in fact, discourage the purchase of the producer's interest in loan cotton, even where the purchaser had no intention of redeeming such cotton from the loan within a reasonable time. In order to correct this situation, and to provide a uniform procedure the Corporation prepared and issued C. C. C. Cotton Form R for use by those who desired to purchase from the producer the power to redeem commodities held under loan. These forms stated that they must be presented within 15 days after execution by the producer and contained a request for the release of the pledged cotton. By use of this form, the Corporation was assured that the producer's interest in pledged cotton would not be divested more than a short time prior to redemption of the cotton from the loan.

"On April 3, 1940, the Corporation issued a press release, giving notification of its intention to require the submission of a request for the release of cotton under loan to any person other than the producer on a standard form printed and provided by the Corporation, where such requests were received after July 31, 1940. Under the terms of this press release, persons holding purported assignments from producers were given a period of practically four months within which to execute the power to redeem granted in such documents. Because of the policy pursued in the past by the Corporation, it might be held to have undertaken an equitable obligation to the holders of attempted assignments to make no change in such policy without reasonable notice. Even should the Corporation be considered as having undertaken this obligation, it amply discharged it by the notification to interested persons that it would continue to permit redemption of the cotton by persons presenting such forms prior to July 31, 1940.

"The press release of April 3, 1940, was approved prior to its issuance by the officers of the Commodity Credit Cor-

poration and by the Secretary of Agriculture. The press release, has, therefore, a dual nature, being both the official act describing the regulation and the public announcement. C. C. C. Cotton Form R is the form which was prepared by the Corporation in accordance with the terms of the press release of April 3, 1940. The form itself and the requirements for the release of cotton contained therein were approved on behalf of the Corporation by myself as Director of the Cotton Division and by the Vice President of the Corporation, Mr. John D. Goodloe."

Extracts from letter of J. B. Hutson, President of Commodity Credit Corporation (R. 102-105).

"The terms of the Loan Agreement under which the cotton referred to you was pledged to the Commodity Credit Corporation are such that the producer does not retain a right of assignment which the Corporation is legally bound to recognize. The Corporation, in so drawing its loan instruments, was giving recognition to the Congressional purpose in establishing the cotton loan programs—namely, to provide a means whereby the producer could be assured the benefit of improved prices while the cotton remained under loan.

"While not recognizing any legal liability to persons taking so-called assignments of the producers' equity, the Corporation did permit the holders of such instruments to redeem the cotton upon paying the amount outstanding upon the loan where the cotton was still available. The so-called assignments were recognized simply as requests by the producer for the release of the cotton to the 'assignee.'

"The Corporation believed that the fact that the Corporation undertook no legal liability to such 'assignees' would prevent persons from purchasing such instruments unless

they intended the immediate redemption of the cotton from the loan and that under these circumstances the recognition of the so-called assignments as requests by the producers of the release of the cotton would be in the interest of the producer since it would provide an easy means for the producer to realize upon an increase in the value of the pledged cotton at the time he desired to terminate the loan.

"Having discovered, however, that a large number of purported assignments were being purchased for a nominal consideration for speculative purposes by cotton brokers and others who had no intention of redeeming the cotton from loan within a reasonable time, despite the fact that they had no assurance that the Corporation would recognize their requests for the release of the cotton, the Corporation prepared and issued CCC Cotton Form R. Under the terms of this form, the Corporation recognizes the purchaser's interest in the cotton and right to redeem the same from loan, provided the form is properly executed and is presented to the Corporation within 15 days with a request for the immediate release of the cotton.

"The Corporation issued a press release on April 3, 1940, to which wide publicity was given throughout the Cotton Belt, announcing that, after July 31, 1940, it would recognize requests for the release of cotton under loan by persons other than the producer only when such request was on a properly executed CCC Cotton Form R. The latter date represented the maturity date of all outstanding cotton loans held by the Corporation. Under this procedure, persons holding 'assignments' were given a period of almost four months within which to redeem the cotton in which they asserted an interest. The Corporation's extension of the loans for an additional year was grounded upon the producer's interest in the pledged cotton being safeguarded in accordance with this procedure, since the Corporation could justify an extension of the loan only in

the event that the producer was assured the benefits of any increase in price.

"Since any document purporting to transfer to you all the producer's right, title, and interest in cotton, was subject to the terms and conditions of the agreement under which the cotton was pledged to Commodity Credit Corporation, you are not, of course, in a position to require the Corporation to recognize your right to redeem the pledged cotton from loan upon the basis of the purported assignments of January 2, 1940."

APPENDIX C.

Mississippi Code 1930, Section 3347.

"3347. Sale of Personal Property.—A contract for the sale of any personal property, goods, wares, or merchandise, for the price of fifty dollars or upward, shall not be allowed to be good and valid unless the buyer shall receive part of the personal property, goods, wares and merchandise, or shall actually pay or secure the purchase-money, or part thereof, or unless some note or memorandum, in writing, of the bargain be made and signed by the party to be charged by such contract, or his agent thereunto lawfully authorized."

Mississippi Code 1930, Section 3521.

"3521. Rights of Person to Whom a Receipt Has Been Negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

"(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

"(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him."

FILED
OCT 8 1942
CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

No. 411

JOE A. MAY AND LEE MAY,
Petitioners,

versus

JNO. M. PARKER COMPANY, INC.,
Respondent.

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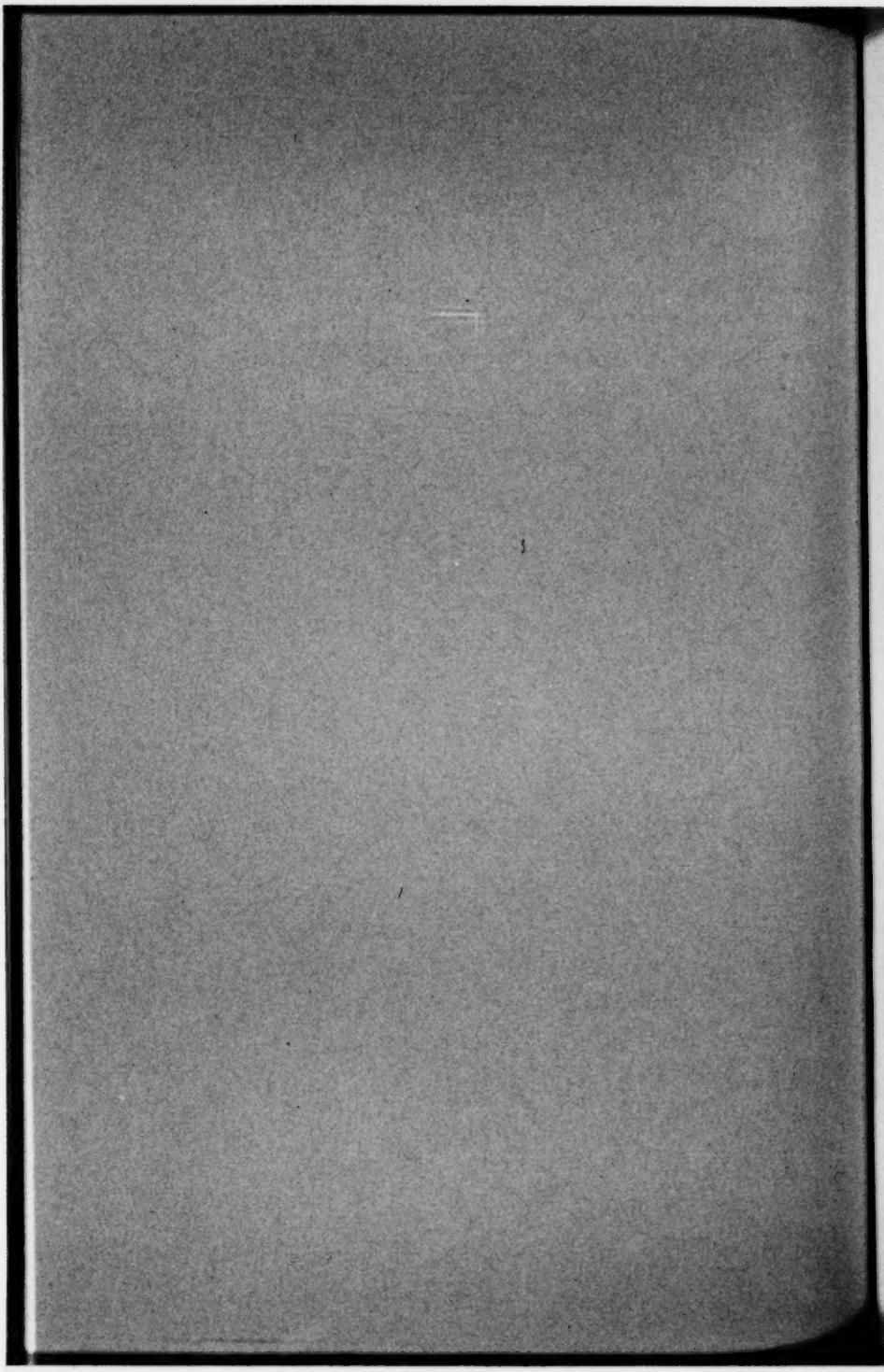

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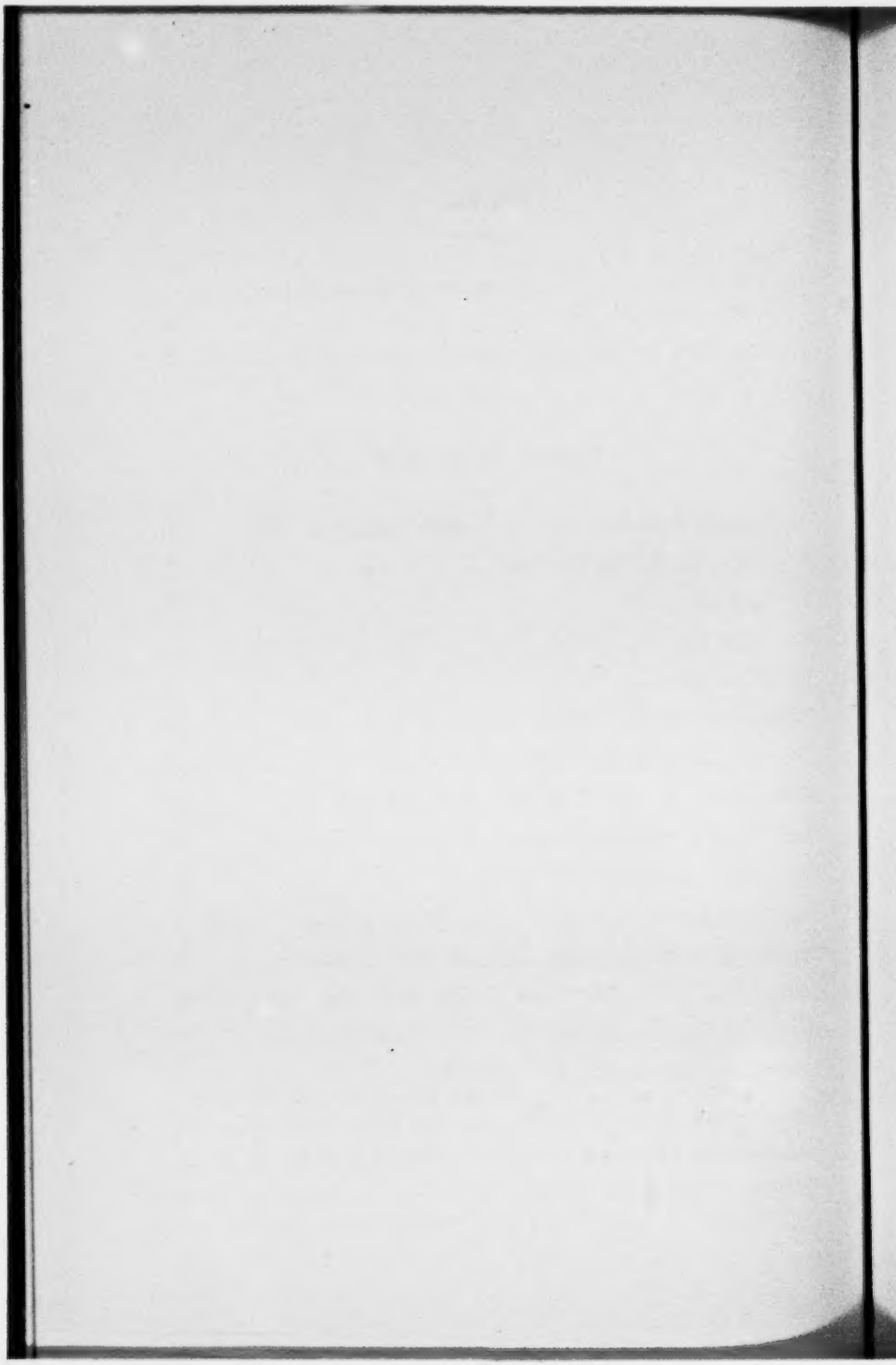

IN THE

Supreme Court of the United States

No.

JOE A. MAY AND LEE MAY,
Petitioners,

versus

JOHN M. PARKER COMPANY, INC.,
Respondent.

OPPOSING BRIEF FOR RESPONDENT

May It Please the Court:

We submit that this case does not present for consideration the alleged points mentioned at page 9, paragraph 1, of the petition:

First: Because the record shows that the Commodity Credit Corporation made no objection to the sale of the equities, and was at all times ready and willing to recognize such sales, and recognized forms other than form "R" up to the 31st day of July, 1940, the sale involved in this case having been made on January 2, 1940. (See pages 4 and 5 of Petition).

Secondly: The Commodity Credit Corporation has never been a party to this suit and is not concerned, the issue being whether petitioners are liable in damages for selling respondent's cotton to a third party and thus breaching the agreement and converting the proceeds to

their own use. The only Supreme Court issue that could possibly arise within the scope of this case would be whether the Commodity Credit Corporation could, contrary to the Acts of Congress and contrary to the Constitution, in a matter that did not concern it, by adopting a rule, deprive citizens of their vested rights, and, if so, whether the statement of the Corporation to the newspapers had such effect. The press release (R. 100) did not purport to prohibit any trading in loan cotton by producers, and was, on its face, merely a regulation concerning the internal management of the Commodity Credit Corporation relative to the type of forms it would honor.

Thirdly: If a case involving the violation of the rules of the Commodity Credit Corporation, made prior to the vesting of title, should ever arise, the issue now coined by petitioners will be presented.

The petition, argument and record clearly show that the entire petition hinges upon the two points mentioned at page 9, paragraph 1 of the petition and hence, if these two points fail, the others, under the rules of this Court, also fail. (See opinion of Circuit Court of Appeals, the facts recited being clearly borne out by the record.)

As above pointed out, the record shows that the Commodity Credit Corporation merely adopted a rule for its own convenience, but assuming that the C. C. C. attempted to pass a rule which would assist sellers of cotton in violating their contracts and unconscionably selling their cotton twice, then such attempt, insofar as this case is concerned, would be governed by the following authorities:

The contract of transfer would have been good even if the assignment had been void.

People vs. Hanley Milling Co., 41 Fed. Supp. 844.

A law should not be construed so as to be retroactive.

Auffmordt vs. Rasin, 102 U. S. 620-3, 26 L. Ed. 262-3.
Heong vs. U. S., 112 U. S. 536, 28 L. Ed. 770.

The validity of an agreement depends upon the state of the law when it was made.

17 C. J. S. title "Contracts", Sec. 22.

A contract, valid when made, is not affected by a later change in public policy.

17 C. J. S. title "Contracts", Sec. 24.

When an obligation is possible of performance, it must be performed.

17 C. J. S., Sec. 459;
Mulvaney vs. King Paint Mfg. Co., 256 Fed. 612;
Dermott vs. Jones, 2 Wall. 1;
Day vs. U. S., 245 U. S. 159, 62 L. Ed. 219;
Jacksonville vs. Hooper, 160 U. S. 514, 527, 40 L. Ed. 515, 9 Cyc. 625.

This is the law in Mississippi:

Tallahatchie Lbr. Co. vs. Cecil Lbr. Co., 124 Miss. 897, 87 So. 449;
Piaggio vs. Somerville, 119 Miss. 6;
Jamison vs. McDaniel, 25 Miss. 83.

A subsequently arising impossibility, not provided for in the agreement, does not excuse failure to perform.

Boyden vs. U. S., 13 Wall. 17;
Jacksonville vs. Hooper, 160 U. S. 514, 40 L. Ed. 515.

An express contract to do an act which is possible in the nature of things and not contrary to law, will not be discharged by subsequent events or rules of law which do not render the performance physically impossible.

London & Lancashire Ind. Co. vs. Board of Commrs., 140 N. E. 672.

A party to a contract is under an implied obligation to cooperate in its performance, and cannot take advantage of an obstacle to performance which it has created or **which lies within its power to remove.**

Murphy vs. North American Co., 24 Fed. Supp. 471, 478.
Williston on Contracts (Rev. ed.) 887-A: Restatement of Contracts, Sec. 395.

It is respectfully submitted that the issuance of certiorari should be denied.

Respectfully submitted,

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